
FINDING AND RECOMMENDATION(S)

Submitted by: The Permit Streamlining Working Group

Finding:

The existing system for determining and obtaining permits in California to reduce fuel loads is often confusing, sometimes redundant, and overly complex. This confusion has resulted in problems in three areas: First, discouraging property owners from creating defensible space. Second imposing unnecessary costs and delays to removing trees for new construction on private property; and third, reducing fuels on urban lots owned by state and federal governments. One way to eliminate confusion, cost, and delays and thereby assist in reducing the risk of catastrophic fire in the Tahoe Basin is to simplify and streamline the permits and, in some instances, eliminate permits required for defensible space and fuel reduction projects on urban lots. In Nevada, the existing permitting system for defensible space work is clear and effective, and has the support of the Nevada Division of Forestry (NDF), North Lake Tahoe Fire Protection District, and Tahoe-Douglas Fire Protection District.

Background and Supporting Evidence:

ISSUE 1: Defensible Space on Non-Federal Lands in California:

The public has expressed confusion regarding what permits they need to create defensible space on their property. At present, there is no permit required from any agency for creating defensible space when cutting trees less than 14 inches diameter at breast height (DBH). Formerly since approximately 1971, the maximum diameter limit for cutting trees without a TRPA permit was 6 inches DBH. Beginning January 27, 2008, TRPA's new policy requires permits only to remove trees greater than 14 inches DBH except within TRPA-designated Shorezone areas. Currently, the TRPA has entered into Memoranda of Understanding (MOU) with six of seven local fire agencies allowing the districts to mark trees and issue permits for defensible space compliance on non-federal land for trees over 14 inches DBH. Unless a landowner wishes to commercialize trees removed from their property (see next three paragraphs regarding CAL FIRE), the TRPA Tree Removal Permit is the only permit required and then only when removing trees over 14 inches DBH.

CAL FIRE does not require a permit to remove trees or vegetation within 100 feet of a structure or to the property line (if less than 100 feet), as long as tree removal is not for a commercial purpose as defined under the Public Resources Code (§4527) definition of *timber operations*. CAL FIRE will continue to train fire agencies on performing PRC §4291 inspections and in the future, will provide additional forestry training for defensible space marking.

Currently California PRC §750-783 regulates the practice of forestry on non-federal forested landscapes to Registered Professional Foresters (RPFs). Landowners are exempted from this when practicing forestry on their own property (PRC §757). In most instances homeowners need professional assistance in understanding and complying

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with fuel clearance (California PRC §4291), but are not likely to be willing/able to absorb the cost of hiring an RPF. Typically, the landowner's initial point of contact relative to fuel clearance compliance will be with a local government representative or a fire protection agency. Technically, recommendations for removal or retention of trees made by local government or a fire protection agency representative for PRC 4291 purposes could fall under the provisions of the Professional Foresters Law and require an RPF license, which these professionals would not have in most cases.

Current law (California PRC §4527) defines timber operations as the cutting or removal of timber and other solid wood forest products from non-federal timberlands for commercial purposes. Commercial purposes includes the cutting or removal of trees which are processed into logs, lumber, or other wood products that are offered for sale, barter, or trade or the cutting or removal of trees or other forest products during the conversion of timberlands to other uses. The results of this provision are that homeowners cannot make commercial use of minor forest products to offset project costs without triggering a need for a Timber Harvesting Plan under Article 7 of the Z'Berg-Negedley Forest Practice Act or an exemption pursuant to PRC §4584. This places an unneeded permitting burden on the landowner and CAL FIRE.

Recommendation No.1A : As is currently the case in Nevada, the Commission recommends that if non-federal property owners in California are cutting trees larger than 14 inches in diameter at breast height for the purpose of complying with California PRC §4291, they should need only one permit, from either TRPA or their local fire agency.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – reduces landowner costs by eliminating the need for CAL FIRE notices.
- ☐ Funding source - none
- ☐ Staffing – none
- ☐ Existing regulations and/or laws – Assists landowners in complying with PRC §4291. Requires California legislative changes to the Public Resources Code.

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – none
- ☐ Political – positive political demonstration of streamlining by public agencies.
- ☐ Policy - none
- ☐ Health and Safety – assists landowners in protecting their homes from catastrophic wildfire.
- ☐ Environmental – assists landowners in reducing the potential for a catastrophic wild fire ignited by a home fire.
- ☐ Interagency - none

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Recommendation No. 1B: The Commission recommends that the TRPA enter into a Memoranda of Understanding with all local fire agencies in the Tahoe Basin, which will allow the fire agencies to mark trees and issue permits for defensible space, including trees 14 inches DBH and larger between the structure and Lake for all properties having structures within the Tahoe Basin and 6 inches DBH and larger, for TRPA-designated Shorezone properties. Regarding MOU's with Fire Agencies, only the very small and seasonally opened Fallen Leaf Fire Community Services District has not signed an MOU with the TRPA. Given its small size, it is not recommended to the Commission that Fallen Leaf Fire Community Services District sign into an MOU with the TRPA.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – reduces costs to landowners by removing the \$53.00 TRPA tree permit fee. Reduces costs to TRPA by delegating tree marking to other agencies. Could increase costs to fire agencies due to tree marking demand.
- ☐ Funding source - none
- ☐ Staffing – may reduce staffing needs for TRPA and may increase staffing needs for fire agencies.
- ☐ Existing regulations and/or laws – Assists landowners in complying with PRC §4291.

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – none
- ☐ Political – positive political demonstration of streamlining by public agencies.
- ☐ Policy - none
- ☐ Health and Safety – assists landowners in protecting their homes from catastrophic wildfire.
- ☐ Environmental – assists landowners in reducing the potential for a catastrophic wild fire ignited by a home fire.
- ☐ Interagency – requires interagency cooperation between TRPA and the fire agencies.

Recommendation No. 1C: The Commission recommends that Cal Fire, Nevada Department of Forestry, TRPA, and the Fire Agencies work together to create a defensible space based tree marking program and further recommends that Cal Fire and NDF include this program in its annual PRC4291 training to all Fire Agencies in the Tahoe Basin within their respective states to ensure that tree marking for California Public resources code 4291 purposes is conducted consistently in the Tahoe Basin. The Nevada Fire Agencies should consider adopting or incorporating PRC4291 or similar defensible space requirements.

Impacts of Implementation:

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REQUIRED analysis of impacts on the following factors:

- ☐ Cost – none
- ☐ Funding source - none
- ☐ Staffing – none
- ☐ Existing regulations and/or laws – Improves consistency of fire laws between states.

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – none
- ☐ Political – none
- ☐ Policy – adoption of PRC §4291 by TRPA and Nevada fire agencies.
- ☐ Health and Safety – creates consistent defensible space laws throughout the Tahoe Basin.
- ☐ Environmental –none
- ☐ Interagency – fosters interagency cooperation and coordination.

Recommendation No. 1D: The Commission recommends that TRPA, the Nevada Fire Safe Council, the University of Nevada Cooperative Extension, and the Fire Agencies increase their outreach efforts to inform private property owners about what permits are needed to reduce fuel loads. This will include developing a consistent message to the public about how to create defensible space in ways that control erosion. The Commission further recommends a single point of contact 1-800-number be developed that property owners can call for information. In addition, the Commission recommends all materials contain a consistent message on how to create defensible space, whether they are created by TRPA, the Nevada Fire Safe Council, and the Fire Agencies, the University of Nevada Cooperative Extension or agencies involved in erosion control.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – could incur costs to agencies for staffing, educational materials and phone line.
- ☐ Funding source – not known
- ☐ Staffing – could require additional staff for outreach and education.
- ☐ Existing regulations and/or laws – Increased public knowledge, understanding and compliance with fire laws.

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – improves social acceptance of forest health and fire prevention principles.
- ☐ Political – positive example of a consistent message across a wide political spectrum.
- ☐ Policy – none
- ☐ Health and Safety – creates consistent message that encourages compliance with defensible space laws and the prevention of catastrophic wildfire.

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- ☐ Environmental – creates consistent message that encourages compliance with defensible space laws and the prevention of catastrophic wildfire while protecting soils and water quality.
- ☐ Interagency – demonstrates interagency support for forest health and fire prevention.

Recommendation #1E: Amend California PRC §757 to provide an exemption from requiring a Registered Professional Forester for local government or fire protection agencies who give advice to landowners for the purposes of complying with PRC §4291.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost - none
- ☐ Funding source - none
- ☐ Staffing – eliminates the need for registered professional forester oversight of PRC §4291 tree marking.
- ☐ Existing regulations and/or laws – PRC §757.

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – none
- ☐ Political – none
- ☐ Policy – clarifies California Forester's Licensing Law related to PRC §4291.
- ☐ Health and Safety – improves the ability for local government and fire protection agencies to provide advice regarding PRC §4291.
- ☐ Environmental – improves the ability for local government and fire protection agencies to provide advice regarding PRC §4291.
- ☐ Interagency – clarifies California Forester's Licensing Law for Tahoe Basin agencies.

Recommendation No. 1F: The Commission recommends that the California legislature take action, such as amending California PRC §4527 Timber Operations or/and PRC §4526 Timberland, so as to eliminate the need for CAL FIRE to require a notice of exemption to remove trees for commercial purposes when removing trees in order to comply with California PRC §4291 within the Lake Tahoe Basin.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – reduces costs to landowners and CAL FIRE by reducing paperwork requirements.
- ☐ Funding source – none
- ☐ Staffing – reduces CAL FIRE staff time spent on processing paperwork and conducting completion inspections.
- ☐ Existing regulations and/or laws – Simplifies Title 14, CCR 1038 and 1104.1 of the California Forest Practice Rules.

OPTIONAL analysis of impacts:

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- ☐ Operational – none
- ☐ Social – Unknown
- ☐ Political – positive demonstration of streamlining by a regulatory agency.
- ☐ Policy – may require a Legislative change in the California Board of Forestry definition of “timberland”.
- ☐ Health and Safety – reduces paperwork for commercial defensible space projects that protect structures from catastrophic wildfires.
- ☐ Environmental – reduces paperwork for defensible space projects that protect structures from catastrophic wildfires Interagency – reduces confusion by eliminating duplication between agencies, and retains TRPA as environmental oversight.

FINDING: New Construction on Undeveloped Land: The situation with new residential and commercial construction on undeveloped land in California is more complicated than that of defensible space. Currently, permits must be obtained from TRPA, CAL FIRE, and the Lahontan RWQCB under differing circumstances.

The TRPA authorizes new construction on non-federal undeveloped lots under its current Regional Plan and addresses requirements for tree removal for construction purposes under TRPA permit or under the County building permit through an MOU with each county. Under the current TRPA Regional Plan, new construction must be within a fixed urban boundary and new land subdivisions are prohibited.

CAL FIRE is required by California law to issue permits for conversions of Timberland to a non-timber growing use, such as residential or commercial construction, on non-federal lands only (except State Parks land). To eliminate CAL FIRE's permitting process, legislative approval is needed to amend the PRC § 4526 definition of timberland in the Lake Tahoe Basin, so as to exempt parcels less than 3 acres in size. If this legislative proposal were approved, landowners would no longer be required to file a Less Than 3 Acre Conversion Exemption with CAL FIRE since the Department does not regulate non-timberland.

Lahontan does require permits or waivers for tree removal for new residential or commercial construction on undeveloped land, but in practice the scale of such development in the Tahoe Basin will fall below the threshold of Lahontan's concern. Lahontan's policy is to review these projects primarily when the development is a new subdivision, not a single-family home. In addition, Lahontan has a MOU with the TRPA for residential construction which gives the TRPA approval to act as Lahontan's agent regarding these types of projects. Confusion arises because this MOU does not clearly state that it addresses tree removal.

Recommendation No. 2A: The Commission recommends that the Lahontan Water Board Executive Officer issue a letter clarifying that its existing MOU with TRPA for residential construction constitutes a waiver of waste discharge requirements for new residential construction, including tree and vegetation removal, therefore eliminating the need for a permit from the Lahontan Water Board.

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Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – none
- ☐ Funding source – none
- ☐ Staffing – none
- ☐ Existing regulations and/or laws – clarification of existing MOU

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – none
- ☐ Political – none
- ☐ Policy – none
- ☐ Health and Safety – none
- ☐ Environmental –reduces paperwork for defensible space projects that protect structures from catastrophic wildfire Interagency-reduces confusion by eliminating duplication between agencies, and retains TRPA as environmental oversight.
- ☐ Interagency – improves interagency understanding of existing agreements.

Recommendation No.2B: The Commission recommends that the California Legislature take action, such as amending PRC4527 Timber Operations or/and PRC4526 Timberland, so as to eliminate the need for Cal Fire to require a notice of exemption within the Lake Tahoe Basin to remove trees for new construction on non-Federal parcels less than 3 acres in size (14 CCR 1104.1), and instead defer to TRPA ordinance.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – reduces costs to landowners and CAL FIRE by reducing paperwork requirements.
- ☐ Funding source – none
- ☐ Staffing – reduces CAL FIRE staff time spent on processing paperwork and conducting completion inspections.
- ☐ Existing regulations and/or laws – Simplifies Title 14, CCR 1038 and 1104.1 of the California Forest Practice Rules.

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – The Sierra Club voiced objections to this proposal to the 2006 Board of Forestry and Fire Protection during discussed changes to the Forest Practice Act, Rules and Regulation pertaining to the Lake Tahoe Region. The Sierra Club was concerned that this proposal would be applied to the rest of the state as well.
- ☐ Political – positive demonstration of streamlining by a regulatory agency.
- ☐ Policy – may require a Legislative change in the California Board of Forestry definition of “timberland”.

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- ☐ Health and Safety – reduces paperwork for commercial defensible space projects that protect structures from catastrophic wildfires.
- ☐ Environmental – reduces paperwork for defensible space projects that protect structures from catastrophic wildfires, and retains TRPA as environmental oversight.
- ☐ Interagency – reduces confusion by eliminating duplication between agencies.

FINDING: Undeveloped Urban Lots Owned by California State or Federal Governments:

A third area of concern pertains to permits required to reduce fuel loads on urban lots owned by the federal government or California State government. Currently for California government lots, the Lahontan Water Board requires proponents of all fuel reduction projects, including hand thinning, to apply for a timber waiver that includes a project description. When the project is of a larger scale with potential to affect water quality, Lahontan Water Board also requires project proponents to submit an inspection plan.

For federal urban lots, the USDA Forest Service (USFS) applies to the Lahontan RWQCB to conduct fuels reduction work under the Lahontan Water Board Timber Waiver. According to the USFS, this is a relatively intensive process. At present, hand crew work conducted on federal lands, including within SEZs, are included in category 1b of the Lahontan Water Board Timber Waiver. More intensive treatments in SEZ's, steep slopes, and/or mechanical treatments are not allowed under Category 1b and therefore require detailed project descriptions and an inspection plan. This in some situations deters or modifies treatment applications to avoid the increased work required to meet the requirements of other Timber Waiver Categories.

CAL FIRE, as Lead Agency for environmental review regarding commercial timber harvesting in California on non-federal lands, is responsible for ensuring the California Forest Practice Act is met. CAL FIRE and the statutory Interdisciplinary Review Team, including the TRPA and the Lahontan Water Board, depend upon office and field review of timber harvesting documents to ensure water quality, aquatic resources, and all other are natural resources are protected.

Current law (PRC §4527) defines timber operations as the cutting or removal of timber and other solid wood forest products from non-federal timberlands for commercial purposes. Commercial purposes includes the cutting or removal of trees which are processed into logs, lumber, or other wood products that are offered for sale, barter, or trade or the cutting or removal of trees or other forest products during the conversion of timberlands to other uses. The results of this provision are that landowners cannot make commercial use of minor forest products to offset project costs without triggering a need for a Timber Harvesting Plan under Article 7 of the Z'Berg-Negedley Forest Practice Act or an exemption pursuant to California PRC §4584. This places an unneeded permitting burden on the landowner and the Department.

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The TRPA has MOUs or other agreements with the California Tahoe Conservancy, California Department of Parks and Recreation, and the U.S. Forest Service that allows these three land management agencies to manage fuels, including removing trees, on their urban lots under specific circumstances and conditions. The United States Forest Service and the TRPA are currently updating and revising their MOU to ensure fuel treatments on urban lots are exempt from the TRPA Permit requirement.

Recommendation No. 3A: The Commission recommends that the Lahontan water Board expand Category 1A of its timber waiver to include urban lots, including lots containing SEZs, owned by Federal, California State or local governments within the Lake Tahoe Basin. This will eliminate the need for these land management agencies to notify or pay a fee to Lahontan to reduce fuel loads on such lots.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – reduces costs to federal and state agencies by reducing paperwork requirements.
- ☐ Funding source – none
- ☐ Staffing – reduces staff time presently used for filing paperwork.
- ☐ Existing regulations and/or laws – simplifies Lahontan Regional Water Quality Control Board (RWQCB) Timber Waiver Application requirements.

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – none
- ☐ Political – positive demonstration of streamlining by a regulatory agency.
- ☐ Policy – none
- ☐ Health and Safety – reduces paperwork for fuel reduction projects that protect structures from catastrophic wildfires. Fuel reduction projects could be more extensive and potentially more effective if a wider range of treatment options were allowed under Category 1a.
- ☐ Environmental – reduces paperwork for fuel reduction projects that reduce the potential for catastrophic wildfires.
- ☐ Interagency – improves interagency cooperation between the Lahontan RWQCB, state and federal agencies.

Recommendation No 3B. : The Commission recommends that the TRPA expand or adopt MOU's with Public Land Managers to exempt tree and vegetation removal from publicly owned urban lots.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – reduces costs to the Public Land Managers by reducing paperwork requirements.
- ☐ Funding source – none

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- ☐ Staffing – reduces staff time presently used for filing paperwork.
- ☐ Existing regulations and/or laws – none

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – none
- ☐ Political – positive demonstration of streamlining by a regulatory agency.
- ☐ Policy – none
- ☐ Health and Safety – reduces paperwork for fuel reduction projects that protect structures from catastrophic wildfires.
- ☐ Environmental – reduces paperwork for fuel reduction projects that reduce the potential for catastrophic wildfires.
- ☐ Interagency – improves interagency cooperation between the TRPA and the Public Land Managers.

Recommendation No.3C : The Commission recommends that the California legislature take actions, relative to the Lake Tahoe Basin, such as amending PRC4527 Timber operations or/and or California PRC 4526 Timberland, so as to no longer require projects on parcels than 3 acres in size that would require a notice of Exemption for Harvesting Christmas Trees, (14CCR 1038 (a), Less than 10% Average Volume of Dead Dying or Diseased Trees (14CCR 1038 (b)), compliance with PRC4290and 4291 (14CCR 1038 (c)) and the Tahoe Exemption (14CCr 1038 (f) from Forest Practice Act filing requirements within the Lake Tahoe Basin and instead refer to TRPA ordinance.

Impacts of Implementation:

REQUIRED analysis of impacts on the following factors:

- ☐ Cost – reduces costs to landowners and CAL FIRE by reducing paperwork requirements.
- ☐ Funding source – none
- ☐ Staffing – reduces CAL FIRE staff time spent on processing paperwork and conducting completion inspections.
- ☐ Existing regulations and/or laws – Simplifies Title 14, CCR 1038 and 1104.1 of the California Forest Practice Rules.

OPTIONAL analysis of impacts:

- ☐ Operational – none
- ☐ Social – The Sierra Club voiced objections to this proposal to the 2006 Board of Forestry and Fire Protection during discussed changes to the Forest Practice Act, Rules and Regulation pertaining to the Lake Tahoe Region. The Sierra Club was concerned that this proposal would be applied to the rest of the state as well.
- ☐ Political – positive demonstration of streamlining by a regulatory agency.
- ☐ Policy – may require a Legislative change in the California Board of Forestry definition of “timberland”.
- ☐ Health and Safety – reduces paperwork for commercial defensible space projects that protect structures from catastrophic wildfires.

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- ☐ Environmental – reduces paperwork for defensible space projects that protect structures from catastrophic wildfires, and retains TRPA as environmental oversight.
- ☐ Interagency – reduces confusion by eliminating duplication between agencies

PROPOSED